

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

HIEP NGUYEN,

Defendant.

NO. CR09-00402RAJ

UNITED STATES' SENTENCING
MEMORANDUM AND MOTION
PURSUANT TO USSG 5K1.1

A. INTRODUCTION

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Nicholas W. Brown and Aravind Swamination, Assistant United States Attorneys for said District, submits this sentencing memorandum.

Sentencing is scheduled for December 3, 2010.

On September 2, 2010, the Defendant entered a plea of guilty to the following charge: Conspiracy to Commit Wire Fraud, as charged in Count 1 of the Indictment, in violation of Title 18, United States Code, Sections 1349 and 2. As part of the Plea Agreement, the United States Attorney's Office for the Western District of Washington agreed to move to dismiss the remaining counts in the Indictment at the time of

1 sentencing.

2 The offense charged in Count 1 carries a maximum penalty of: imprisonment for
3 up to thirty (30) years; fine of up to two hundred and fifty thousand dollars
4 (\$250,000.00); a period of supervision following release from prison of up to three (3)
5 years; and a one hundred dollar (\$100.00) special assessment.

6 **B. THE OFFENSE CONDUCT**

7 This Court presided over a week long trial of co-defendant Mark Ashmore, during
8 which the conspiracy, and the co-conspirators various roles, were gone into in some
9 depth. Mr. Nguyen, testified during the trial and the Court is familiar with the role he
10 played in helping to execute this fraud.

11 The scheme was a classic “credit investor” scam that used the personal and
12 financial information of others to fraudulently gain control of various properties. Mr.
13 Ashmore would identify residential real property for sale. He would then contact the
14 seller of the subject properties, and would generally offer to purchase the property at well
15 above the asking price. As part of the propose sale agreement, the seller of the subject
16 properties sign an “upgrade agreement,” assigning any proceeds over the original asking
17 price to a company owned or controlled by Mr. Ashmore.

18 Mr. Ashmore and his co-conspirators would recruit and pay individuals to pose as
19 buyers (“straw buyers”) for the subject properties, often promising to pay them substantial
20 sums of money. In return for their fee, the straw buyers would allow their identities and
21 credit information to be used in mortgage loan applications. The applications were
22 submitted to financial institutions and mortgage lenders, and represented the straw buyer
23 as the true buyer of the selected properties, and the individual responsible for the loan.
24 The money obtained via the fraudulent loans was the diverted to Mr. Ashmore and then
25 on to the other conspirators, and some was used to secure residential real property for
26 Defendant’s and other members of the conspiracy’s use.

27 Beginning sometime in 2003 and continuing through 2007, the Defendant worked
28 with his co-defendant, Mark ASHMORE, and others, at a business entity called Equity

1 Solutions Northwest (ESNW). ESNW was formed by Mr. Ashmore and the Defendant,
2 and others, to help execute this fraudulent scheme. It was part of Defendant's intent to
3 help Ashmore and his entities gain control of single family residences for himself and his
4 co-conspirators for investment purposes. The Defendant he knew he was unable to
5 legitimately obtain financing to acquire these properties and pay for holding costs and/or
6 remodeling work on the properties using his true financial and credit information.
7 Accordingly, he knowingly and intentionally engaged in the fraudulent scheme described
8 herein to accomplish his objective by illegal means.

9 During this time, the Defendant purchased homes in his own name and assisted
10 two others in purchasing homes in their names, using fraudulent information to obtain the
11 financing for the loans. The Defendant purchased two homes in his own name, both
12 located within the State of Washington, which resulted in a loss of \$480,000. In addition
13 to the properties he personally purchased, the Defendant two associates, C.L. and J.D., to
14 pose as straw buyers. To help facilitate these transactions, the Defendant used a company
15 he owned and controlled called "C-Global" to pose as the employer for the straw
16 purchaser. The property transaction involving the residence located at 10536 NE 24th St.,
17 Bellevue, Washington, resulted in a ultimate loss of \$275,000. The property transaction
18 involving the residence located at 20218 170th Avenue NE, Woodinville, Washington
19 resulted in a ultimate loss of \$192,000.

20 This fraudulent scheme was orchestrated to purchase over forty different
21 residential properties in Washington and Nevada. A majority of the properties were often
22 "flipped" in subsequent transactions, often leading to falsely inflated property values.
23 This means that members of the conspiracy would recruit another straw buyer to purchase
24 the same real property, typically at a significantly inflated price over the prior purchase
25 agreement between a member of the conspiracy and the original seller.

26 The conspirators would also often make, or cause others to make, the payments on
27 the mortgage loans obtained as part of the conspiracy, in an attempt to maintain the loans
28 until the properties could be sold again, oftentimes in another flip to another straw buyer.

1 However, in the end, the conspirators ultimately failed to make payments on the loans,
2 and the properties generally went into foreclosure or were sold in short sales, causing the
3 financial institutions and mortgage lenders to suffer substantial losses.

4 **C. Base Offense Level and Loss Amount Calculations**

5 The Presentence Report accurately summarizes the offense conduct in this case
6 and correctly calculates the offense level, criminal history category, and resulting
7 advisory Sentencing Guidelines range. The Defendant's base offense level is 7, pursuant
8 to U.S.S.G. § 2B1.1.

9 A 14-level upward adjustment based on loss amount also applies, pursuant to
10 U.S.S.G. § 2B1.1(b)(1)(H), as the loss amount is greater than \$400,000, but less than
11 \$1,000,000. The government calculates the actual total loss associated to the Defendant
12 as \$907,000. To arrive at this figure, a Financial Analyst at the FBI and the case agent
13 SA Hilary Salee, took the gross loan amounts for the various properties involved in the
14 scheme, and examined the recorded documents pertaining to the subsequent sales of these
15 properties. However, the gross amount must be reduced by "the amount the victim has
16 recovered at the time of the sentencing from disposition of the collateral, or if the
17 collateral has not been disposed of by that time, the fair market value of the collateral at
18 the time of sentencing." Application Note 3(E)(ii). In addition, for the purposes of the
19 Guidelines calculation, the loss amount is the greater of the actual or intended loss,
20 whichever is higher. Application Note 3(C).

21 **D. Total Offense Level and Advisory Guidelines Range**

22 Pursuant to the plea agreement, the parties agreed that neither party will seek an
23 adjustment based upon the role the Defendant played in committing the offense pursuant
24 to United States Sentencing Guidelines Section 3B1.1 or 3B1.2. The Defendant's role in
25 this case is neither aggravating or mitigating and therefore no role adjustment is
26 appropriate. Mr. Nguyen can be distinguished from his co-defendant's Mr. Reimer and
27 Mr. DiCugno in that his involvement in this scheme lasted a longer period of time. As a
28 long-time friend of Mr. Ashmore and founding member of his company ESNW, Mr.

1 | Nguyen was more intimately involved in some of the aspects of the conspiracy.
2 | However, he also did not personally purchase as many properties himself, nor recruit
3 | many others to be involved. Moreover, the government believes that Mr. Ashmore
4 | controlled most aspects of the conspiracy. The Defendant's role is therefore viewed as
5 | average.

6 | The parties are free to argue the application of any other provisions of the United
7 | States Sentencing Guidelines, but the government does not believe any additional
8 | provisions apply.

9 | The Presentence Report correctly accounts for deductions to the Base Offense
10 | Level for acceptance of responsibility. The Defendant has assisted the United States by
11 | timely notifying the authorities of Defendant's intention to plead guilty, thereby
12 | permitting the United States to avoid preparing for trial and permitting the Court to
13 | allocate its resources efficiently. The Defendant's Total Offense Level should be
14 | decreased by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b).

15 | The Total Offense Level is therefore a level 18. The government agrees that the
16 | defendant has no prior criminal history and is therefore in a criminal history category of I.
17 | The corresponding guideline range is 27-33 months.

18 | **E. COOPERATION.**

19 | The United States respectfully requests the Court depart from the United States
20 | Sentencing Guidelines (USSG) range, pursuant to Section 5K1.1, due to the substantial
21 | assistance provided by the Defendant. The terms of the plea agreement contained a
22 | cooperation provision. Specifically, Mr. Nguyen agreed that he would cooperate
23 | completely and truthfully with law enforcement authorities in the investigation and
24 | prosecution of other individuals involved in criminal activity. Such cooperation would
25 | include, but not be limited to, complete and truthful statements to law enforcement
26 | officers, as well as complete and truthful testimony, if called as a witness before a grand
27 | jury, or at any state or federal trial, retrial, or other judicial proceedings. The Defendant
28 | acknowledged that his obligation to cooperate would continue after he entered a guilty

1 plea and sentence had been imposed, no matter what sentence he received, and the
2 Defendant's failure to continue his cooperation would constitute a breach of the plea
3 agreement.

4 The Defendant fulfilled the terms of his plea agreement by cooperating in the
5 investigation and substantially assisting the government. The Defendant openly admitted
6 his involvement in the conspiracy when first contacted by law enforcement and provided
7 a written statement discussing his culpability. Prior to entering a plea of guilty to the
8 conspiracy charged in Count 1, he proffered to the government about the charged
9 offenses. During the proffer, he admitted to his role in the offense and assisted the
10 government in preparing for trial against his co-defendant Mr. Ashmore. He ultimately
11 testified at trial, and the Court of course had an opportunity to evaluate his testimony and
12 its impact. In the government's estimation, Mr. Nguyen's testimony, along with his co-
13 defendants, was helpful in securing Mr. Ashmore's conviction.

14 **F. RESTITUTION.**

15 As part of the plea agreement, Mr. Nguyen agreed to make restitution to any
16 financial institution harmed by his participation in the charged conspiracy, in an amount
17 to be determined at the time of sentencing. The government calculates the Defendant's
18 restitution amount to be \$810,500. His restitution obligation shall be joint and several
19 with the three co-defendants.

20 **G. RECOMMENDATION AND JUSTIFICATION.**

21 The government respectfully recommends a custodial sentence of 15 months, to be
22 followed by three years of supervised release. As set forth in the Supreme Court's
23 decision in *United States v. Booker*, 453 U.S. 220, 246 (2005), this Court is required to
24 consider the sentencing range calculated under the United States Sentencing Guidelines,
25 together with the other factors set forth in Title 18, United States Code, Section 3553(a),
26 including: (1) the nature and circumstances of the offense and the history and
27 characteristics of the defendant; (2) the need for the sentence imposed (a) to reflect the
28 seriousness of the offense, to promote respect for the law, and to provide just punishment

1 for the offense, (b) to afford adequate deterrence to criminal conduct, (c) to protect the
2 public from further crimes of the defendant, and (d) to provide the defendant with
3 educational and vocational training, medical care, or other correctional treatment in the
4 most effective manner; (3) the kinds of sentences available; (4) the kinds of sentences and
5 the sentencing range established for the offense as set forth in the guidelines; (5) any
6 pertinent policy statement; (6) the need to avoid unwarranted sentence disparity among
7 defendants involved in similar conduct who have similar records; (7) the need to provide
8 restitution to victims.

9 The nature and circumstances of Defendant's offense, as well as his personal
10 history and characteristics, support a 15-month term of imprisonment. First and foremost,
11 the offense the Defendant participated in was an incredibly serious crime. The impact of
12 this credit investor scheme on the mortgage lending industry cannot be overstated. Many
13 of the lenders involved in this particular scheme have gone out of business. This includes
14 Pierce Commercial Bank in Tacoma, Washington, which was closed on November 5,
15 2010. In addition, the Defendant was involved in the formation of ESNW at an early
16 juncture, was more aware of many of the details of the scheme than others involved, and
17 profited substantially from its success.

18 Moreover, the Defendant was personally responsible for using fraudulent loans to
19 purchase numerous properties himself, as well as recruiting others into the scheme as
20 straw buyers. He also convinced members of his family to make substantial personal
21 loans to Mr. Ashmore and his companies, which resulted in substantial losses.

22 The government's recommended sentence is well below the recommended
23 guideline range, solely due to the Defendant's ultimate cooperation against Mr. Ashmore
24 and his lack of criminal history. Given these factors and his personal circumstances, the
25 government believes that he is unlikely to re-offend. On balance, the government
26 believes that a sentence of 15 months is sufficient, but not greater than necessary, to
27 satisfy the goals of sentencing.
28

1 **H. CONCLUSION**

2 For the reasons set forth above, the government respectfully recommends a
3 sentence of 18 months, to be followed by three years of supervised release.

4 Respectfully submitted this 24th day of November, 2010.

5 Respectfully submitted,

6 JENNY A. DURKAN
7 United States Attorney

8 /s Nicholas Brown
9 **NICOLAS BROWN**
10 ARAVIND SWAMINATHAN
11 Assistant United States Attorneys
12 United States Attorney's Office
13 700 Stewart Street, Ste. 5220
14 Seattle, Washington 98101
15 Facsimile: 206-553-0755
16 Phone: 206-553-1565
17 E-mail: nicholas.brown@usdoj.gov
18
19
20
21
22
23
24
25
26
27
28